IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7108 of 1995

with

FIRST APPEAL No 7109 to 7168 of 1995

And

CROSS OBJECTIONS No. 192/96 to 211/96

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI and

MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

HEIR OF RAVCHANDBHAI G. PATEL

Appearance:

1. First Appeals No. 7108 to 7138 of 1995
and Cross Objections No.192 to 201/96
Mr S S Patel, AGP for Petitioner
Mr G H Bhatt for the respondents

2. First AppealNo 7139 to 7168 of 1995
and Cross objections No.202 to 211/96
Mr P G Desai, GP for Petitioner

Mr G H Bhatt for the respondents

CORAM : MR.JUSTICE M.H.KADRI and
MR.JUSTICE D.P.BUCH
Date of decision: 01/02/2000

CAV JUDGMENT (COMMON) (Per Buch, J.)

These are the appeals by the State of Gujarat under Section 54 of the Land Acquisition Act read with Section 96 of the Code of Civil Procedure, 1908 against the judgment and award dated 21.9.190 recorded by the Reference Court presided over by the learned Asstt. Judge, Sabarkantha in Land Reference Cases No.955 to 11017 of 1987. Twenty respondents-claimants have filed cross-objections under Order 41 Rule 22 of the Code of Civil Procedure, claiming enhanced compensation.

2. The Reference Court, considering the above cases and after appreciating the oral and documentary evidence on record enhanced the amount of compensation in accordance with the award dated 21.9.1990 in the above numbered Land Reference Cases.

3. The agricultural lands of the claimants-original respondents situated in village Surpur, Taluka-Himatnagar were required for Guhai Jalagar Scheme. Notification under section 4 (1) of the Land Acquisition Act, 1854 (for short 'the Act') was published on 19.4.1982 and notification under section 6 was published on 27.9.1983 in the Government Gazette of the State. Thereafter, necessary procedure was followed and after hearing the respondents, the Land Acquisition Officer issued award on 26.3.1983 under which he assessed the compensation of irrigated lands at Rs.162.50 per Are. So far as non-irrigated land is concerned, he assessed compensation at Rs.112.50 per Are. In sofar as waste land is concerned, assessment was made at Rs.40/- per Are.

4. The respondents were not satisfied by the aforesaid assessment and, therefore, they all submitted applications for reference under Section 18 of the Act to the Land Acquisition Officer requesting him to refer the applications for determination of compensation of the

acquired lands to the Reference Court. The references were registered accordingly and the appellants were called upon to file objections. The objections were filed and the learned trial Judge framed necessary issues and after recording evidence, the trial Judge felt that the assessment of compensation made by the Land Acquisition Officer was on a lower side and, therefore, the trial Judge determined the market value of the acquired lands at Rs.600/- per Are for irrigated land and Rs.400/- per Are for non-irrigated land. Accordingly he passed the aforesaid award on 21.9.190 in all these cases.

5. Feeling aggrieved by the aforesaid judgment and award of the learned trial Judge, the State of Gujarat has preferred these appeals before this Court under Section 54 of the Act read with Section 96 of the CPC. It has been mainly contended that the award was a consent award and, therefore, it could not be altered by way of Reference under section 18 of the Act. It has also been contended that the learned trial Judge has committed error in enhancing the amount of compensation payable to the respondents. That the learned trial Judge has committed error in holding that the compensation awarded by the Land Acquisition Officer is inadequate. That the learned trial Judge has erred in appreciating the provisions of the said Act. That the learned trial Judge has erred in appreciating the oral evidence of Ramabhai at Exh.60. That even the error has been committed by the learned Judge in appreciating the documentary evidence on record. That on the whole, the impugned judgment and award is illegal and erroneous and it deserves to be set aside. The appellants, therefore, pray that the impugned judgment and award passed by the learned trial Judge be set aside.

6. We have heard the learned Government Pleader and the learned AGP. We have also heard the learned Advocate for the respondents. It may be stated that the respondents have filed cross-objections and, therefore, the learned counsel for the respondents was heard on the point of cross-objections. It was mainly contended by the learned Advocate for the respondents on the point of cross-objections that the learned trial Judge has committed serious error in awarding compensation at Rs.600/- per Are for irrigated land and Rs.400/- per Are for non-irrigated land. That in fact compensation should have been awarded at least at Rs.678/- per Are for irrigated lands and the compensation for non-irrigated land should also have been more than what was awarded by the learned trial Judge. Therefore, the respondents have

prayed that the compensation awarded by the learned trial Judge should be enhanced accordingly.

7. At the outset it may be stated that the learned Advocate for the appellants has very vehemently argued that the matter is the outcome of the consent award and, therefore, the Reference Court ought to have dismissed the references as not maintainable.

8. This point was contended before the learned trial Judge and the learned trial Judge has considered, discussed and decided the issue against the appellants in para 7 of the judgment. It is an admitted position that the officer before whom the said compromise is said to have taken place, has not been examined by the appellant-State. It was not the case of the appellant-State that the said officer had retired or he was not otherwise available for giving evidence. As the officer before whom the compromise allegedly took place was not examined there was no primary evidence produced by the appellant-State before the learned trial Judge. On behalf of the respondents, Ramabhai - Exh.60, one of claimants had been examined and he had denied that the said compromise has taken place as stated by the State. So far as the appellant is concerned, this fact was not proved by the officer who was present at the time of the alleged compromise. On the other hand, the respondents have denied the said position.

9. Another aspect of the matter is that it becomes evident from the Government Resolution of 17.3.1982 that about 14 dignitaries were present at the time when compromise is said to have taken place. One of them was a sitting MLA and another was the President of Taluka Panchayat. The appellant did not examine any of those 14 dignitaries to prove the alleged consent awards. The Resolution indicates that the talk had taken place in presence of representatives of the owners of the acquired lands and Rehabilitation Advisory Committee. It shall be mentioned here that the Committee members or their representatives were not examined before the trial court. Therefore, no evidence was produced by the appellant to prove the consent awards.

10. Deputy Executive Engineer-Rajnikant Kantilal Shah - Exh.216 examined by the appellants clearly stated that he was not present when the said talk took place. Even the concerned forms were not properly filled up and the witness examined was not present when the agreements were allegedly signed, and therefore, execution and the contents of those agreements were not proved in

accordance with law.

11. The judgment at para 7 shows that the said agreement indicated the option i.e. consent or otherwise. However, it was not mentioned as to whether the deponent consented to the said award. The objections invited and obtained show that the said agreements were not executed in accordance with the law of evidence.

12. Under the circumstances, the consent award had not been properly proved by the appellants and, therefore, the trial Judge did not commit error in ignoring the said plea of the appellants holding that the appellants had failed to prove that there was consent award as alleged by the appellants, and therefore, the references were not maintainable.

13. As regards the other contentions of the parties are concerned, it is a known practice that for the purpose of assessment of value of the property, sale instances of neighbouring properties would be a good evidence. The second option is to have the previous awards of similarly situated lands and on crop income basis. These are the three known methods for assessing the value of the properties taken under acquisition.

14. It can be gathered that there were no sale instances produced by the parties to prove the value of the acquired lands on the date of issuance of notification under Section 4 (1) of the Act. However, the respondents have produced certain sale instances of other villages. Therefore, we would be able to consider those documents for the purpose of assessing the value of the properties in question.

15. Para 8 of the judgment shows that the price index was produced at Exh.168. According to which the value of the agricultural lands of Pratappura was shown at Rs.460.68 per Are. The respondent's witness defended that Pratappura village is situated very near to village Surpur where the lands in dispute were situated. However, the sale documents have not been produced and the seller and purchaser have not been examined to support the case of the appellants.

16. Para 9 of the judgment refers the price index at Exh.169 showing the value of the land of village Vansdol at Rs.1000/- per Are. It is dated 12.11.1980. The sale documents do not appear to have been produced and the purchaser and seller were not examined. Similarly Exh. 171 which is also the price index of village Savasala and

with respect to sale instances as indicated therein, no purchaser or seller were examined. It would be useful to refer to a decision of the Apex Court in Special Dy. Collector v. Kurra Sambasiva Rao, AIR 1997 SC 2625 which clearly lays down that the sale deed of comparable lands have to be proved by examining the vendor or vendee or scribe. It is also ruled that Section 51A does not dispense with the proof of comparable sale deeds. As stated above, these transactions have not proved in accordance with the requirement of law by examining the seller, purchaser or scribe. The Reference Court has justified in not placing reliance on the sale instances for the determination of market value of the acquired lands.

17. One more method for determining the market value of the property acquired is the previous acquisition of land and the value ascertained as compensation in such matters.

18. The Reference Court has referred to these instances in para 10 of the judgment. There the Reference Court has referred to Exh.172, the certified copy of the judgment in Land Reference Case No.952/87. It relates to the land of village Savli. There the value fixed for non-irrigated land is Rs.468/per Are and for irrigated land, the value fixed is at Rs.678/- per Are. Another instance shown is through Exh.173 referring to Land Acquisition Reference Case No.1072/87. The Reference Court has observed that there also the value has been fixed in accordance with the value fixed in the earlier case under Exh.172. Therefore, these References have been decided earlier would be relevant and for the purpose of assessing the value of the acquired land which is in dispute before us.

19. It would be material to observe that the lands covered by Exh.172 and Exh. 173 were lands of village Savli. The distance between village Savli and village Surpur is not very much and in fact if we peruse the map of these two villages, it can be gathered that the two villages have actually been divided by flow of river. The admitted position drawn from the said map is that the river flows in Northwest direction and on the eastern side of the river, there is village Surpur whereas village Savli is situated on the western side of the river. This shows that these two villages are almost opposite to one another. Under the circumstances, it may be kept in mind that the value of the land acquired at village Savli can be safely considered for comparison for the land acquired at village Surpur. Learned Advocate

for the land owners has vehemently contended that at least that amount should be awarded to the land owners. It is, therefore, his argument that the valuation should be fixed on par with the valuation fixed in earlier awards referred to at Exh.172 and 173 meaning thereby that the irrigated land should be considered at Rs.678/- per Are and non-irrigated land should be considered at Rs.468/per Are.

20. On this point it has to be considered that village Surpur is a very small village having a population of about 445 persons only. It is a remote area and there is a very little scope for further development of the village. Considering the backwardness of the area in which the village is situated, we feel that it would not be proper to equate these lands totally on par with the lands of village Savli which is little more developed than village Surpur. Under the circumstances, request of the learned Advocate for the land owners that the value of the lands in dispute should be fixed at Rs.678/- per Are for irrigated lands and Rs.468/- per Are for non-irrigated lands, has to be rejected. In that view of the matter, the cross objections filed by them for enhancement of compensation have to be rejected.

21. So far as the Government appeals are concerned, it has to be considered that the Reference Court has considered the earlier awards and that appears to be based on evidence available on record. There is no reason to disregard the value fixed by the Reference Court at Rs.600/- per Are for irrigated lands and Rs.400/- per Are for non-irrigated lands. We do not find any reason to reduce this valuation fixed and decided by the Reference Court. Therefore, we are of the view that so far as the value of lands as fixed by the Reference Court is concerned, there is no merit in favour of the acquiring body or of the State. In that view of the matter, the appeals are required to be dismissed since we are of the opinion that the Reference Court has correctly arrived at the finding of fact with respect to the value of the irrigated and non-irrigated lands which is based on the earlier awards. It is more so, when the earlier awards stand final as it is not pointed out by the learned AGP for the Government that the earlier awards are challenged in Supreme Court. When the awards have become final, for village Savli when the Government has not preferred appeals against those awards, then in that event, there is no reason as to why the people of Surpur should be deprived of the said finality attained by those awards of village Savli. Therefore, we are of the view

that the Reference Court has correctly determined the value of the irrigated and non-irrigated lands at Rs.600/- and 400/respectively and we do not propose to disturb the said finding of the Reference Court.

22. Learned Advocate for the appellants has vehemently contended that the price should be fixed at Rs.300/- per Are only. However, his argument was not supported by any reason flowing from the evidence on record. It would be material to mention that the State has not produced any material evidence on record to show that the value of the lands acquired can be fixed on a lower side.

23. The Reference Court also observed that so far as the irrigated lands are concerned, the land owners-respondents are not entitled to any amount of compensation for wells separately and independently. However, on this point, there is no serious dispute and the learned Advocate for the respondents has not claimed additional amount of compensation for wells situated in irrigated lands. However, so far as the wells situated in non-irrigated lands are concerned, the Reference Court has considered some amount of compensation in page 15 of the judgment. It would be material to note that these are the non-irrigated lands and the value has been considered in respect of these lands accordingly. In that view of the matter, when the wells have been found in these lands and when the lands have been considered as non-irrigated lands, and when the value has been fixed on a lower side, then in that case we feel that there is nothing wrong for awarding additional compensation for the wells situated in these lands. In that view of the matter, we are of the opinion that the Reference Court has correctly determined that the land owners are entitled to compensation for the wells situated in the non-irrigated lands.

24. So far as the value of these lands are concerned, we do not find that the Reference Court has committed any error in determining the value of the wells. Therefore, we do not disturb that part of the finding of the Reference Court with respect to the value of those wells situated in the non-irrigated lands. So far as the price of the lands is concerned we are in general agreement with the reasoning and findings of the Reference Court. We do not propose to disturb the same. So far as the value of the wells is concerned, there also we do not disturb the findings of the Reference Court, inasmuch as the Reference Court has awarded compensation for the value of the wells situated in the non-irrigated lands

only. But we take note of the fact that no separate compensation has been awarded with respect to the wells situated in the irrigated lands by the Reference Court.

25. So far as the cross objections are concerned, we are of the view that the Savli and Surpur villages are just opposite to one another. There is some difference in the development of the two villages and village Surpur is found to be a backward village having a population of 445 persons. Therefore, it would not be just and proper to fully equate the value of the lands of village Savli and the value of the lands of village Surpur.

26. The decision of the Special Land Acquisition Officer v. P Veerbhadrappa, AIR 1984 SC 774 was also referred to us. This is a decision relating to the determination of value of sale by applying the method of capitalising return. However, we have considered the previous awards and not the crop income in this particular group of cases, and therefore, it would not be necessary for us to refer to this decision in detail. Learned Advocate for the respondents has referred to a decision of Nand Ram & Ors. v. State of Haryana dated 6.9.1988 in Civil Appeal No.3147 of 1988. However, this decision will not be very much helpful to the land owners because in that matter, all the lands, similarly situated and the lands were acquired under the same notification on the same date. Here the position is little different. The lands are different in all respects. On the one hand there are lands of village Surpur and on the other, village Savli and the two villages are not totally comparable. Then certain other decisions were also shown but the copies of the judgments of this Court show that the appeals of the State Government were summarily dismissed. We do not have any idea as to what was the situation of those lands and what was the fertility etc. Therefore, those cases could not be gainfully utilised in this matter.

27. Another decision of this Court in First Appeals No.3842 to 3843 of 1997 dated 27.4.1998 was relied on by the learned Advocate for the respondents. In this case, it is not shown whether the lands being the subject matter of that judgment are comparable with the lands which are the subject matter in the appeals before us. Therefore, that judgment can also not be utilised for the purpose of considering the value of the lands in dispute before us.

28. So far as the appeals of the appellants are concerned, they are without any merit and therefore, they

deserve to be dismissed. So far as the cross-objections are concerned, they are also found to be meritless and, therefore, they also deserve to be dismissed. Hence we direct that all these appeals bearing Nos. FA 7108/95, 7109 to 7168 of 1995 as well as the cross objections No. 192 to 211 of 1993 are ordered to be dismissed. Since the appeals and cross objections are being dismissed, we leave the parties to bear their own costs in appeals as well as cross objections.

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msp.